



January 21, 2009

SENATE BILL No. 251

DIGEST OF SB 251 (Updated January 20, 2009 11:52 am - DI 71)

Citations Affected: IC 5-2; IC 10-19.

Synopsis: Criminal intelligence information. Provides that criminal intelligence information concerning a particular individual or organization may be collected and maintained only if there is reasonable suspicion that the individual or organization is involved in criminal conduct or activity. Sets forth grounds for reasonable suspicion. Requires certain security measures for criminal justice agencies to use in maintaining and disseminating criminal intelligence information. Provides that a criminal justice agency may not include in a criminal intelligence system information that has been obtained in violation of the law. Provides that, unless dissemination of information to another person is necessary to avoid imminent danger to life or property, a criminal justice agency may disseminate information only to another criminal justice agency that follows security measures in maintaining and disseminating information. Makes a corresponding change to the statute governing the Indiana intelligence fusion center.

Effective: July 1, 2009.

Wyss, Merritt, Arnold

January 7, 2009, read first time and referred to Committee on Homeland Security, Transportation & Veterans Affairs.
January 20, 2009, reported favorably — Do Pass.

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January 21, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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SENATE BILL No. 251

A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-4-1, AS AMENDED BY P.L.1-2007,
2 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 1. As used in this chapter, unless the context
4 otherwise requires:
- 5 (1) "Criminal history information" means information collected
6 by criminal justice agencies or individuals consisting of
7 identifiable descriptions and notations of arrests, detentions,
8 indictments, informations, or other formal criminal charges, and
9 any disposition arising therefrom, sentencing, correctional
10 supervision, and release.
- 11 (2) "Criminal intelligence information" means ~~information on~~
12 ~~identifiable individuals compiled in an effort to anticipate,~~
13 ~~prevent or monitor possible criminal activity, including terrorist~~
14 ~~activity. "Criminal intelligence information" does not include~~
15 ~~criminal investigative information which is information on~~
16 ~~identifiable individuals compiled in the course of the~~
17 ~~investigation of specific criminal acts. data that have been~~

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evaluated to determine that the data:

(A) are relevant to the identification of and the criminal activity engaged in by an individual or an organization that is reasonably suspected of involvement in criminal activity; and

(B) meet criminal intelligence system submission criteria.

(3) "Criminal intelligence system" means the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information.

~~(3)~~ (4) "Criminal justice agency" means any agency or department of any level of government which performs as its principal function the apprehension, prosecution, adjudication, incarceration, rehabilitation of criminal offenders, or location of parents with child support obligations under 42 U.S.C. 653. The term includes:

(A) a nongovernmental entity that performs as its principal function the:

(i) apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders; or

(ii) location of parents with child support obligations under 42 U.S.C. 653;

under a contract with an agency or department of any level of government;

(B) the department of homeland security established by IC 10-19-2-1; and

(C) the Indiana intelligence fusion center established by IC 10-19-10-2.

(5) "Interjurisdictional intelligence system" means a criminal intelligence system that involves two (2) or more participating agencies representing different governmental units or jurisdictions.

(6) "Participating agency" means a criminal justice agency that:

(A) exercises law enforcement or criminal investigation authority; and

(B) is authorized to submit and receive criminal intelligence information through an interjurisdictional intelligence system.

A participating agency may be a member or a nonmember of an interjurisdictional intelligence system.

SECTION 2. IC 5-2-4-3 IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2009]: Sec. 3. Criminal intelligence information concerning a particular individual **or organization** shall be collected and maintained by a state or local criminal justice agency only if grounds exist connecting the individual with known or suspected criminal activity **there is reasonable suspicion that the individual or organization is involved in criminal conduct or activity** and if the information is relevant to that **conduct or activity and meets criminal intelligence system submission criteria.**

SECTION 3. IC 5-2-4-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.5. (a) Reasonable suspicion or criminal predicate is established when information exists that establishes sufficient facts to give a trained law enforcement or criminal investigative agency officer, investigator, or employee a basis to believe that there is a reasonable possibility that an individual or an organization is involved in a definable criminal activity or enterprise.

(b) In an interjurisdictional intelligence system, the criminal justice agency is responsible for establishing the existence of reasonable suspicion of criminal activity either:

- (1) through examination of supporting information submitted by a participating agency; or
- (2) by delegation of the responsibility to a properly trained participating agency that is subject to routine inspection and audit procedures established by the criminal justice agency.

SECTION 4. IC 5-2-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. Criminal intelligence information shall be reviewed by the chief executive officer of the criminal justice agency at regular intervals to determine whether the grounds for retaining the information still exist and if not, it shall be destroyed: (a) A criminal justice agency maintaining criminal intelligence information shall:

- (1) ensure that administrative, technical, and physical safeguards, including audit trails, are adopted to ensure against:
 - (A) unauthorized access; and
 - (B) intentional or unintentional damage;
 to the information;
- (2) keep a record indicating who has been given information, the reason for release of the information, and the date of each dissemination outside the criminal justice agency;
- (3) label information to indicate:
 - (A) levels of sensitivity;



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(B) levels of confidence; and

(C) the identity of the submitting agencies and control officials; and

(4) establish written definitions for the need to know and right to know standards for dissemination to other agencies under section 6 of this chapter.

(b) A criminal justice agency is responsible for establishing the existence of an inquirer's need to know and right to know information by either:

(1) inquiry; or

(2) delegation of the responsibility to a properly trained participating agency that is subject to routine inspection and audit procedures established by the criminal justice agency.

(c) A criminal justice agency maintaining criminal intelligence information shall ensure that the following security requirements are implemented:

(1) Where appropriate, the criminal justice agency must adopt effective and technologically advanced computer software and hardware designs to prevent unauthorized access to the information contained in the system.

(2) The criminal justice agency must restrict access to its facilities, operating environment, and documentation to organizations and employees authorized by the criminal justice agency.

(3) The criminal justice agency must store information in the system in a manner that the information cannot be modified, destroyed, accessed, or purged without authorization.

(4) The criminal justice agency must institute procedures to protect the information from unauthorized access, theft, sabotage, fire, flood, or other natural or manmade disaster.

(5) The criminal justice agency must establish procedures based on good cause for implementing the authority to screen, reject for employment, transfer, or remove employees authorized to have direct access to the system.

(d) A criminal justice agency may authorize and use off-premises remote system data bases to the extent the data bases comply with the security requirements set forth in subsection (c).

(e) A criminal justice agency shall establish procedures to ensure that all information retained by the criminal justice agency has relevancy and importance. The procedures must:

(1) provide for the periodic review of information and the destruction of any information that is misleading, obsolete, or

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otherwise unreliable; and

(2) require that any recipient agencies are advised of changes that involve errors or corrections.

All information in the system must be reviewed and determined to comply with the criteria for submission to the system at least one (1) time during each five (5) year retention period. Information retained after a periodic review must reflect the name of the reviewer, the date of the review, and an explanation of the decision to retain the information.

SECTION 5. IC 5-2-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. ~~No~~ (a) A criminal justice agency shall **not** collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, corporation, limited liability company, business, or partnership, **or other organization**, unless ~~such~~ the information directly relates to an investigation of past or threatened criminal acts or activities and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal acts or activities: **criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.**

(b) A criminal justice agency shall not include in a criminal intelligence system information that has been obtained in violation of any applicable federal, state, or local law or ordinance. In an interjurisdictional intelligence system, the criminal justice agency is responsible for establishing that information is not entered in violation of federal, state, or local laws or ordinances, either:

(1) through examination of supporting information submitted by a participating agency; or

(2) by delegation of the responsibility to a properly trained participating agency that is subject to routine inspection and audit procedures established by the criminal justice agency.

SECTION 6. IC 5-2-4-6, AS AMENDED BY P.L.186-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) Criminal intelligence information is hereby declared confidential and, **except as provided in subsection (b)**, may be disseminated only: ~~in accordance with section 7 of this chapter;~~

(1) to a criminal justice agency that agrees to follow procedures regarding information receipt, maintenance, security, and dissemination that are consistent with the principles set forth in this chapter regarding information receipt, maintenance, security, and dissemination; and ~~only~~

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(2) if the agency making the dissemination is satisfied that ~~the~~
~~there is a need to know and intended uses of the information are~~
~~reasonable and that the confidentiality of the information will be~~
~~maintained:~~ **a right to know the information in the**
performance of a criminal justice activity.

(b) When necessary to avoid imminent danger to life or property, a criminal justice agency may disseminate an assessment of criminal justice information to:

(1) a government official; or

(2) another individual:

(A) whose life or property is in imminent danger;

(B) who is responsible for protecting the life or property of another person; or

(C) who may be in a position to reduce or mitigate the imminent danger to life or property.

SECTION 7. IC 5-2-4-7, AS AMENDED BY P.L.186-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) ~~Except as provided in subsection (b), A person who knowingly releases criminal intelligence information to an agency or person other than a criminal justice agency in violation of~~ **section 6 of this chapter** commits a Class A misdemeanor.

~~(b) When necessary to avoid imminent danger to life or property, a criminal justice agency may disseminate an assessment of criminal intelligence information to:~~

~~(1) a government official; or~~

~~(2) another individual:~~

~~(A) whose life or property is in imminent danger;~~

~~(B) who is responsible for protecting the life or property of another person; or~~

~~(C) who may be in a position to reduce or mitigate the imminent danger to life or property.~~

SECTION 8. IC 10-19-10-4, AS ADDED BY P.L.101-2006, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. The Indiana intelligence fusion center may collect criminal intelligence information only if:

~~(1) reasonable suspicion exists~~ **the individual or organization**
~~that is the subject of the criminal intelligence information is~~
~~involved~~ **reasonably suspected of involvement** with ~~or has~~
~~knowledge of possible criminal or terrorist activity; and~~

~~(2) the criminal intelligence information:~~

~~(A) is relevant to the criminal or terrorist activity; and~~

~~(B) meets criminal intelligence system submission criteria.~~

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COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security, Transportation and Veterans Affairs, to which was referred Senate Bill No. 251, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 251 as introduced.)

WYSS, Chairperson

Committee Vote: Yeas 7, Nays 0.

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